

The Italian Government Enforces Gender Parity in Regional Elections

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On 23 July 2020, the Italian government formally warned Apulia that if the region did not introduce gender parity election rules by 28 July 2020, it would do so in its place. Apulia failed to adopt a regional statute in that time frame. Thus, on [31 July 2020](#), the Italian government adopted Decree Law 86/2020 which essentially introduced a mechanism of “double gender preference” for the regional Parliament (*consiglio regionale*) elections to be held on 20-21 September 2020. According to its Article 2, each voter can indicate two preference votes which must go to candidates of different sex. The sanction for not respecting this rule is the annulment of the second preference(s). The decree law also nominated the Prefect of Bari (Antonella Bellomo) as commissioner in charge of supervising the implementation of the rules. On [3 August 2020](#), she confirmed this double gender preference and the modalities of its implementation on the voting ballots. Decree Law 86/2020 was eventually converted into legislation by both chambers of the Italian Parliament without modifications on [7 August 2020](#).

The substitution of the regional legislator by the national government is enshrined at [Article 120, paragraph 2 of the Italian Constitution](#). This provision provides that “[t]he Government can act for bodies of the regions, metropolitan cities, provinces and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities. The law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with the principles of subsidiarity and loyal co-operation”.

Other relevant constitutional provisions that need to be mentioned are [Article 122, paragraph 1 of the Italian Constitution](#) which provides that regional electoral matters are the domain of concurring/shared competences inasmuch as “[t]he electoral system and the cases of ineligibility and incompatibility of the President, the other members of the Regional Executive and the Regional councillors shall be established by a regional law in accordance with the fundamental principles established by a law of the Republic, which also establishes the term of elective offices”. Last but not least, [Article 51 of the Italian Constitution](#) establishes a constitutional mandate for gender parity measures in the electoral context by providing that: “[a]ny citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law. To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men”.

The legal framework

Legislation and case law by the Constitutional Court (CC) then further specified when and how such a substitution is legally feasible.

As to legislation, [Article 8 of Statute 131/2003](#) established the *procedure* whereby such substitution should take place. Upon a proposal by the competent ministry or also the initiative of the regions or other sub-national units, the Prime Minister indicates a reasonable time frame within which the sub-national unit(s) should adopt the necessary provisions. If such provisions are not adopted, then the Council of Ministers itself intervenes, by adopting the necessary measures or by nominating a commissioner. The President of the concerned region takes part at the Council of Minister's meeting.

On the *substance*, Article 4 of Statute 165/2004 as modified by [Statute 20/2016](#), specifies those fundamental principles mentioned under Article 122 of the Italian Constitution which include *inter alia* at Article 4, *c bis*) the promotion of equal opportunities between men and women in access to elective positions. Overall, on no electoral candidate list shall there be more than 60 per cent of the candidates of the same sex. As to the various possible electoral systems, in case of a possibility of at least two preference votes, one must be reserved to a candidate of a different sex. If that rule is violated, the preferences indicated after the first one are annulled. When no preference votes are foreseen, then the list must be set up according to a zipper system alternating candidates of different sexes. Last but not least, in cases of single candidate elections, the 60 per cent quota must be respected amongst the candidates running for the same party/list. Thus, technically since 2016, Italian regions are required to introduce gender quotas in their regional election rules.

As to the CC's case law, it further specified the contours of such substitutive powers. For example, judgments [313/2003](#) and [43/2004](#) determined that the list at Article 120, para. 2 is not exhaustive and that other powers of substitution, such as those of a region taking over competences of municipalities are possible. Judgment [361/2010](#) elaborated on the limits of the acts which can be adopted by the national government or by the commissioner.

Loyal cooperation

This is also where Decree Law 86/2020 becomes interesting because it contributes to the debate of whether the national government can or should use decree laws in order to act in place of sub-national units. In judgment [361/2010](#), the CC indicated in *obiter dictum* that the national government is free to use such an instrument. But it is questionable whether the requirement of necessity and urgency for decree laws established at [Article 77 of the Italian Constitution](#) is compatible with the requirement of loyal cooperation at Article 120 of the Italian Constitution.

With regard to the current matter, on the one hand, the requirement of urgency and necessity explains why the legislator only adopted this measure with regard to Apulia. In fact, apart from Piedmont and Calabria (ordinary regions) as well

as Friuli-Venezia Giulia and the Aosta Valley (special regions), Apulia is the only ordinary region that still does not have any such quotas *and* which has elections in September 2020.

On the other hand, the deadline of only five days by which Apulia was supposed to adapt its electoral legislation raises doubts as to whether it constitutes the 'loyal cooperation'; all the more that we are in the heart of the Italian summer and that two of those five days were a weekend. Truth be told, Apulia and Liguria had already [been warned](#) earlier about such a governmental intervention. Liguria managed to adopt a [regional statute](#) with a gender parity mechanism on 21 July 2020. Nevertheless, the short official time frame for the warning remains questionable from the perspective of loyal cooperation.

A danger to national legal unity?

Decree Law 86/2020 is even more interesting for its broader political-legal and comparative law implications. In fact, the political decision by the Italian government itself is fairly unique. So far, the Italian government had used decree laws mostly to enjoin regions or other sub-national actors to conform to EU law obligations and in the domain of public health. However, characterizing the absence of gender quotas in certain regions as an immediate danger to the preservation of Italy's legal unity because it violates a basic civil right is a different step. Even though over the past twenty years, the Italian legislator introduced electoral gender quotas at various levels, such as for European Parliament elections (Statutes [90/2004](#) and [65/2014](#)), regional Parliament and local government elections (Statutes [215/2012](#), [56/2014](#) and [20/2016](#)) and for both Chambers of the national Parliament (Statute [165/2017](#)), with Decree Law 86/2020, the Italian government steps in as an actor enforcing the non-respect of such quotas. It remains to be seen if the other ordinary and special regions without gender parity electoral rules will, as a consequence of this governmental action, adopt gender quotas. They are, in theory, legally required to do since Statute 20/2016.

The framing of these measures as gender parity relevant for national unity is also interesting from a comparative law perspective. One cannot but help thinking about the current political and constitutional debates around gender quotas in Germany, as discussed amongst other things on the pages of this blog [here](#) and [here](#). Indeed, the contrast between Germany and Italy could not be starker. On the one hand, in Germany the *political* and *academic* doubts over the usefulness and efficacy of such parity measures are strong. Moreover, the recent successful constitutional challenge in [Thuringia](#) against such quotas demonstrates that also legally the obstacles are considerable. On the other hand, in Italy all central state powers have by now embraced quotas and their framing is broad, rather than narrow. As shown above, the Legislative has been the most pro-active. After initial hesitations, the CC and administrative judiciary have also demonstrated themselves open to actively protect and enforce these quotas in a [series of judgments](#). This summer's event demonstrates that the Executive now is also joining in, by enforcing quotas against sub-national levels.

Whether gender parity measures will ultimately change the percentage of female representation is a different question. Even the new measure for Apulia and its gender-neutral formulation could actually prevent progress. In fact, if someone wants to vote for two or more women – which would definitely bring female numbers up – the preferences after the first would be annulled. Overall, one thing is sure, namely that female representation in Italy did increase since when the first quotas were introduced, even though mechanisms to avoid or undermine the functioning of such quotas have appeared. The recent national parliament elections in 2018 demonstrate that the number of elected women rose to [35,7% in the Lower House and 34,8% in the Upper House](#). This is still somewhat less than the required 40%. One explanation is that more men were nominated for single candidate districts where a win was sure. The second is that the law allows up to five candidacies on one list, meaning that if the same woman is eligible on five different electoral districts, then only she and four men will be elected.

What is clear is that this summer's events around the Apulia election are yet another example of the "[irresistible rise of gender quotas in Europe](#)", where Germany increasingly stands out as the proverbial exception.

